

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

FILED
SEP 10 2018
Clerk, U.S. Courts
District Of Montana
Missoula Division

RAYMOND JOSEPH EVA,

Plaintiff,

vs.

**DAN O'FALLON, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,**

Defendants.

CV 18-32-BU-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order and Findings and Recommendations on June 7, 2018, recommending to deny Plaintiff Raymond Joseph Eva's Petition for Writ of Habeas Corpus (Doc. 1) for lack of merit and to deny a certificate of appealability. (Doc. 5.) Eva failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 5), the Court finds no clear error in Judge Lynch's conclusion that Eva's Petition should be denied because Eva failed to state a claim for injuries cognizable under 28 U.S.C. § 2254. “[I]t is not the province of the federal habeas court to reexamine state court determinations on state law questions.” *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991). Eva does not allege a violation of federally protected rights but rather that the state court erred as a matter of state law in revoking his sentence. Nor did Judge Lynch clearly err in recommending that a certificate of appealability be denied, as Eva has made no “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED that:

- (1) Judge Lynch's Findings and Recommendation (Doc. 5) is ADOPTED IN FULL.
- (2) Eva's petition (Doc. 1) is DENIED.
- (3) A certificate of appealability is DENIED.
- (4) The Clerk of Court is directed to enter judgment in favor of the Respondent and against the Petitioner.

DATED this 10th day of September, 2018.

Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court